

to MCIm or such other applicant will not be available for assignment to any other person or entity, including SWBT. Notwithstanding such provisional assignment, MCIm shall not occupy such space without first obtaining a license, except as provided in Section 8.03. The following additional requirements shall apply:

(1) Before giving SWBT a notice of its intent to occupy unassigned space, MCIm shall make a good faith determination that it actually plans to occupy such space. The assignment process shall not be used by either Party for the purpose of holding or reserving space which such Party does not plan to use or for the purpose of precluding SWBT or any other person or entity from utilizing or having access to SWBT's poles, ducts, conduits, or rights-of-way.

(2) With respect to unassigned conduit occupancy space, the notice must include all information required to enable SWBT and joint users, including other persons or entities which may from time to time seek space in the same ducts and conduits, to determine the specific space which MCIm desires to occupy. The notice must, therefore, include, at a minimum, the following information:

(i) the specific conduit sections and each manhole to be occupied;

(ii) the number of ducts and number of inner ducts to be occupied by MCIm within each conduit section;

(iii) the physical size (diameter) of the cables to be placed in such duct, if known, or the maximum and minimum sizes of the cables which may be placed if more than one size cable is being considered for the space to be occupied;

(iv) the anticipated use by MCIm of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;

(v) MCIm's best estimates of the dates when MCIm plans to begin and complete construction at the sites specified in the notice; and

(vi) if applicable, a conspicuous statement that MCIm intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.

(3) With respect to unassigned pole space, such notice must include all information required to enable SWBT and other joint users, including other persons or entities seeking space on the same poles, to determine the specific space which MCIIm desires to occupy. The notice must, therefore, include, at a minimum, the following information:

- (i) the specific poles to be occupied;
- (ii) the specific space on each pole to be occupied, including the height (distance from the ground) of the attachment and the side (road or field) where the attachment is to be made;
- (iii) the anticipated number and types of cables to be attached, together with the anticipated physical size (diameter) and weight (weight per foot) of such cables, and the anticipated number and types of strands, if any, to be used to support the cables. Such information shall be sufficient to give notice to SWBT and other joint users of the remaining space on the pole available and what make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to MCIIm;
- (iv) the anticipated use by MCIIm of any infrequent construction techniques and connectivity solutions authorized under section 6.03 to avoid high or unusual expenditures;
- (v) MCIIm's best estimates of the dates when MCIIm plans to begin and complete construction at the sites specified in the notice; and
- (vi) if applicable, a conspicuous statement that MCIIm intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.

(4) No later than 30 days after giving such notice, MCIIm shall file an application under Section 9.02 or the provisional assignment will lapse.

(5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable MCIIm to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned

pursuant to this subsection is actually available.

(c) Assignments made prior to the issuance of a license will be provisional assignments and will be subject to modification if it is subsequently determined that the space selected by or assigned to MCIm is already occupied or that a different assignment is required to comply with SWBT's standards for assigning pole, duct, and conduit occupancy space.

(d) MCIm's obligation to pay semi-annual pole attachment or conduit occupancy fees will commence from the date the assignment (including any provisional assignment made pursuant to subsection (b)), is recorded in the appropriate SWBT records.

(e) During the 12-month assignment period following the date space is assigned to MCIm and entered into the appropriate SWBT record, SWBT shall not occupy or use such space without MCIm's permission, shall not assign such space to any Party other than MCIm, and shall not knowingly permit any Party other than MCIm to occupy or use such space without MCIm's permission except as otherwise specifically provided in this Agreement. The assignment to MCIm will automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if MCIm has not occupied such assigned space within such 12-month period; provided, however, that if MCIm's failure to occupy the space within such 12-month period results from SWBT's failure to perform make-ready work on schedule, the parties shall negotiate a single extension of the assignment period, which extension shall not extend the assignment period beyond three months from the date of completion of SWBT's make-ready work; and, provided further, that if MCIm can demonstrate that its failure to occupy the space within such 12-month period results from the actions of SWBT or third parties, the assignment may be extended for a period no longer than three months from the date MCIm is first able to commence construction at the site involved. Extensions permitted under this subsection must be recorded on the appropriate SWBT records available for inspection under Section 7.03.

(f) If SWBT assigns pole, duct, or conduit space to itself, such assignment will automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if SWBT has not occupied such assigned space within such 12-month period; provided, however, that if SWBT's failure to occupy the space within such 12-month period results from the actions of MCIm or third parties, SWBT's assignment may be extended for a period no longer than three months from the date SWBT is able to commence construction at the site involved. Extensions permitted under this subsection must be recorded on the

appropriate SWBT records available for inspection under Section 7.03..

(g) If capacity expansions, make-ready work, or facilities modifications on any pole, duct, or conduit are required due to the assignment of space to MCIm or SWBT under this Section, the Party to whom such space has been assigned will reimburse the person or entity incurring the costs for such capacity expansions, make-ready work, or facilities modifications if the Party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period.

(h) Except as provided in subsection (f) above, assignments shall not be extended, renewed, or repeated in any manner (other than by actual occupancy) that enables MCIm, SWBT, or any joint user to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.

(i) At MCIm's election, MCIm may file an application for access which specifically requests that the space sought by MCIm not be assigned to MCIm immediately and not be recorded immediately in the SWBT records available for inspection by other telecommunications carriers, cable television systems, or other providers of telecommunications services under Section 7.03 of this Agreement. In that event, the space sought by MCIm will remain available for assignment, without restriction, until such time as such space is assigned to MCIm in accordance with MCIm's written instructions and the assignment is recorded in the records available for inspection under Section 7.03. The assignment shall be made no later than the date of issuance to MCIm of a license confirming that MCIm has the right to occupy the space described in the license. In the event that MCIm elects to proceed under this subsection, MCIm's obligation to pay pole attachment and conduit occupancy fees shall not commence until the date the assignment is recorded in the appropriate SWBT records and MCIm shall bear all risks associated with the possibilities that (1) the space sought by MCIm will be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate MCIm's application and repeat the field inspection portion of the pre-license survey at MCIm's expense.

8.03 Immediate Occupancy. SWBT shall, within sixty (60) days after the effective date of this Agreement, adopt interim procedures which will provide MCIm the ability to attach or place facilities on or in SWBT's poles, ducts, conduits, and rights-of-way on an immediate basis when such space is available for MCIm's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on sixty (60) days advance notice to MCIm, revise or terminate such interim procedures if they prove to be unworkable, in which event MCIm may seek renegotiation of this Agreement or challenge SWBT's decision in accordance

with procedures available to MCIIm under applicable federal and state laws, regulations, and commission orders. The special procedures established under this section shall supplement, rather than replace, the regular assignment and licensing procedures set forth in Sections 8-10 of this Agreement, are intended to be used only under special circumstances (e.g., when the regular procedures allow insufficient time to meet customer service commitments or resolve non-routine construction or network contingencies), shall not be used on a routine basis, and shall be consistent with subsections (a) - (g) below.

(a) Upon giving SWBT the notice required by this subsection, MCIIm may immediately occupy space assigned or provisionally assigned to MCIIm pursuant to section 8.02 of this Agreement. The notice shall be contained in either a notice of intent to occupy as provide in section 8.02(b) or a license application under section 9.02. MCIIm shall not give such notice or occupy such space without first reviewing SWBT's records and determining that the records reflect that the space sought is available.

(b) MCIIm shall not occupy space which has not been assigned or provisionally assigned to MCIIm. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to MCIIm's occupancy. If MCIIm subsequently determines that the records are inaccurate and that the space assigned to MCIIm is not available, or that the space assigned is not suitable for MCIIm's intended use, MCIIm shall, within **ten (10) business days** notify SWBT in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, MCIIm shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which MCIIm will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, MCIIm may occupy space not assigned to MCIIm subject to the following terms and conditions.

(1) MCIIm may occupy the next available space shown on SWBT's records as available at the time of MCIIm's last review of the records. MCIIm shall not knowingly occupy space occupied by or assigned to SWBT or any third party without consent of the party to whom the space has been assigned.

(2) Within **five business days** after occupying such space, MCIIm shall submit to SWBT an application for the space occupied showing the reason for MCIIm's use of the space occupied.

(3) SWBT shall be entitled to recover from MCIIm actual costs, if any, directly incurred by SWBT as a result of MCIIm's decision under this subsection to occupy space subject to a valid prior assignment to

## SWBT.

(c) Nothing in this section authorizes MCIm to place facilities on or in any pole, duct, or conduit space already occupied by the facilities of SWBT or a third party, even if the presence of such facilities is not reflected on SWBT's records.

(d) Nothing in this section authorizes MCIm, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by MCIm) or (2) utilize any infrequent construction techniques or connectivity solution described in section 6.03.

(e) If MCIm has not done so already, within **five (5) business** days after occupying space pursuant to this section, MCIm will submit to SWBT an application for the space occupies as provided in section 9.02 of this Agreement. The application may be submitted by fax.

## Section 9: Applications And Pre-License Surveys

9.01 Licenses Required. Except as otherwise specifically permitted in this Agreement, MCIm shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts, conduits, manholes, or handholes. License applications and information received by SWBT in connection with such applications shall be subject to the provisions of Section 24 of this Agreement (Confidentiality of Information).

9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Agreement, MCIm shall submit to SWBT two signed copies of the appropriate application forms. SWBT represents that the forms specified in subsections (a)-(b) are forms in use prior to the effective date of this Agreement and that SWBT plans to revise such forms to conform to the provisions of this Agreement and to streamline the application process. The Parties therefore agree that the forms specified in subsections (a) and (b) will be interim forms only.

(a) To apply for a pole attachment license, MCIm shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Forms SW-9433 ("Pole Attachments"). An application for a pole attachment license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9433 and

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SW-9434 are attached to this Agreement as parts of APPENDIX III.

(b) To apply for a conduit occupancy license, MCI shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9434 and SW-9435 are attached to this Agreement as parts of APPENDIX III.

(c) Each application for a license under this Agreement shall include, at a minimum, the following information:

(1) the poles, ducts, and conduits (including all manholes) along MCI's proposed route to or within which MCI desires to attach or place its facilities;

(2) a description of the facilities to be attached to SWBT's poles and a description of the facilities to be placed within each component of SWBT's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and

(3) for poles, the proposed points of attachment.

(d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:

(1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);

(2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and

(3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SWBT's poles or placed in SWBT's conduit system.

(e) When it appears to MCIIm that capacity expansions, make-ready work, or other facilities modifications may be required to accommodate MCIIm's access requests, MCIIm shall describe the make-ready work or facilities modifications which MCIIm proposes. MCIIm shall also describe its plans, if any, to use any infrequent construction techniques or connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures and its reasons for the use of such techniques or solutions.

(f) MCIIm acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SWBT, that it may be necessary for SWBT to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate MCIIm's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for MCIIm to determine with certainty whether a particular pole is owned or controlled by SWBT or by another entity. Accordingly, the application shall, to the extent feasible, identify all poles utilized by SWBT (without regard to ownership) along MCIIm's proposed route.

(g) Each application for a license under this Agreement shall be accompanied by a construction schedule showing MCIIm's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SWBT's engineering and outside plant construction personnel in scheduling work required to process MCIIm's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate MCIIm's facilities.

(h) An application for a license shall included, if applicable, a statement that MCIIm intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.

(i) MCIIm may include multiple cables in a single license application and may provide multiple services (e.g., CATV and non-CATV services) under the same cable sheath or jacket. When both CATV and non-CATV services are provided under the same cable sheath or jacket, or CATV and non-CATV services are provided using different cables attached or lashed to the same strand or otherwise occupying the same space on a pole or the same duct or inner duct within a conduit, MCIIm will so advise SWBT and SWBT shall, if permitted by law, adjust its charges to enable SWBT to charge MCIIm the rate applicable to telecommunications carriers rather than the rate applicable to cable television systems solely to provide cable service.

9.03 Cooperation in the Application Process. The orderly processing of

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applications submitted by MCI and other firms seeking access to SWBT's poles, ducts, conduits, and rights-of-way requires good faith cooperation and coordination between SWBT's personnel and personnel acting on behalf of MCI and other firms seeking access. The Parties, therefore, agree to the following transitional procedures which will remain in effect during the term of this Agreement unless earlier modified by mutual agreement of the Parties:

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, MCI shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which MCI does not plan to use or for the purpose of precluding SWBT or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.
- (b) MCI shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and shall use its best efforts to submit applications in an orderly manner in accordance with MCI's needs. If MCI contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, MCI shall give SWBT advance notice as promptly as is reasonably practicable.
- (c) No more than 300 poles (and their associated anchors) shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

9.04 MCI's Priorities. When MCI has multiple applications on file within a single SWBT plant construction district, MCI shall, at SWBT's request, designate its desired priority of completion of pre-license surveys, capacity expansions, make-ready work, and facilities modifications with respect to all such applications.

9.05 Pre-license Survey. A pre-license survey (including a review of records and field inspection, if necessary) will be completed by SWBT after MCI has submitted its written license application as specified in Section 9.02 of this Agreement. SWBT shall not, without due cause and justification, repeat pre-occupancy survey work performed by MCI.

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be

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performed by SWBT or its authorized representative. Primary purposes of the field inspection will be to enable SWBT to (1) determine or confirm the capacity expansions, make-ready work and facilities modifications, if any, necessary to accommodate MCIm's facilities; (2) plan and engineer the make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, and rights-of-way and associated facilities for MCIm's proposed attachments or occupancy; and (3) to estimate the costs associated with such capacity expansions, make-ready work and facilities modifications. SWBT may dispense with the field inspection if it appears that the information necessary to process MCIm's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT.

(b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SWBT.

(c) Before performing any portion of the pre-license survey, SWBT shall obtain MCIm's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted.

#### Section 10: Issuance And Denial of Licenses (Including Capacity Expansions, Make-Ready Work, and Facilities Modifications)

10.01 Response Within 45 Days. Within 45 days of MCIm's submission of a license application pursuant to Section 9.02 of this Agreement, or within such other period of time as may be mutually agreed upon in writing by the Parties, SWBT shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or SWBT personnel involved in the processing of MCIm's request for access become aware of hazardous substances at the site requested by MCIm, SWBT shall promptly notify MCIm and shall, at MCIm's request, discuss alternatives to denial and issues associated with the presence of hazardous substances at the site.

(a) If access is granted, SWBT shall, no later than 45 days after MCIm's submission of the license application, further advise MCIm in (1) writing what capacity expansions, make-ready work, or facilities modifications, if any, will be required to prepare SWBT's pole or conduit facilities, (2) and shall provide MCIm an estimate of charges for such capacity expansions, make-ready work, or facilities modifications; and (3) disclose to MCIm any hazardous substances known by SWBT to be present at the site.

(b) SWBT may take into account issues of capacity, safety, reliability, and engineering when considering requests for access, provided the assessment of such factors is done in a nondiscriminatory manner. If access is denied, SWBT shall confirm the denial in writing by the 45th day after the receipt by SWBT of MCIm's completed application. A denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If MCIm in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.

(c) MCIm agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, MCIm shall promptly withdraw or amend its application.

(d) Notwithstanding the 45-day deadline, *SWBT shall, pursuant to Section 8.03 of this Agreement, make available to MCIm for immediate occupancy any pole, duct, or conduit, space that is not currently assigned, not designated as the maintenance duct, and not subject to applicable make-ready requirements. Availability determinations shall be based on records to be maintained by SWBT but which will be made available for viewing by MCIm upon request within two business days notification as provided in section 7.03 of this Agreement. [Missouri Award No. 16(2)]* MCIm will bear all risks resulting from the possibility that space which appears from the records to be available is not in suitable condition to be used by MCIm.

10.02 **Obligation to Construct or Modify Facilities; Capacity Expansions.** SWBT may grant access subject to MCIm's approval of such capacity expansions, make-ready work or facilities modifications as may be required to expand capacity to accommodate MCIm's request, in which event MCIm shall either accept such conditions, initiate good faith negotiations to explore other potential accommodations, or withdraw its request for access. If SWBT does not offer to expand capacity and denies MCIm's request for access, SWBT shall promptly notify MCIm of such determination. SWBT shall not deny MCIm's request for access on lack of capacity grounds when capacity can be expanded as provided in this Section and in Section 6.03 (infrequent construction techniques and connectivity solutions):

(a) *At MCIm's request, SWBT shall modify its outside plant facilities poles or conduit system to accommodate MCIm's facilities, subject to MCIm's agreement to pay the costs of such modifications to the extent that MCIm agrees to pay for the modification at a cost, such as but not limited to cable consolidations, as long as such; provided, however that such modifications are shall be consistent with the capacity, safety,*

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grounds when capacity can be expanded as provided in this Section and in Section 6.03 (infrequent construction techniques and connectivity solutions):

(a) **At MCI's request, SWBT shall modify its outside plant facilities poles or conduit system to accommodate MCI's facilities, subject to MCI's agreement to pay the costs of such modifications to the extent that MCI agrees to pay for the modification at a cost, such as but not limited to cable consolidations, as long as such; provided, however that such modifications are shall be consistent with the capacity, safety, reliability and engineering considerations which SWBT would apply to itself if the work were performed for its SWBT's own benefit. Outside plant modifications subject to this subsection include, but are not limited to, installation of inner duct, cable consolidations and the removal of cables that are retired or inactive (dead).** Except as otherwise specifically provided in this section, SWBT may recover from MCI the costs of modifying or expanding its outside plant facilities to make space available for MCI's facilities and charges for such modifications shall be determined and billed in the same manner as other make-ready work as provided in Section 19.06 and Appendix I of this Agreement. Reimbursements for the creation or use of additional capacity shall be made pursuant to Section 10.09 of this Agreement. [Missouri Award No. 16(1)]

(b) SWBT will, at its own expense, install inner duct in SWBT's conduit system as necessary to make space available for MCI's facilities. Inner duct installations to accommodate MCI's facilities will be performed by SWBT within the same time intervals which would apply if SWBT were performing such installations for itself. If SWBT's intervals for beginning or completing inner duct installation do not meet MCI's needs, MCI may arrange for the inner duct installation to be performed by an authorized contractor selected by MCI from a list, jointly developed and maintained the parties, **of contractors mutually approved as qualified to perform inner duct installations.** MCI may (as an authorized contractor) install the inner duct itself if MCI is on the list of mutually approved contractors at the time the work is performed. [Missouri Award No. 16(1)] When inner duct is installed in SWBT's conduit system by MCI or an authorized contractor selected by MCI, SWBT will provide the inner-ducting materials to be installed and MCI shall bear all other installation expenses. MCI shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to MCI on a timely basis. MCI shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by MCI or an authorized contractor selected by MCI shall be installed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if the inner duct were being installed by

SWBT or SWBT's contractors. MCIm shall indemnify and on request defend SWBT from any damages or claims resulting from the installation of inner duct by MCIm or any authorized contractor selected by MCIm under this subsection. MCIm shall not arrange for inner duct installation to be performed by subcontractors who are not authorized contractors.

(c) *SWBT shall, at its expense, remove cables that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e., cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, MCIm may, at its option, may arrange for an authorized contractor to excavate the obstruction or request that SWBT excavate the obstruction or, in the alternative, arrange for excavation of the obstruction to be performed by an authorized contractor selected by MCIm from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform such excavations. MCIm may excavate the obstruction itself if MCIm is on the list of mutually approved contractors at the time the work is performed. Such excavations will be at MCIm's expense; removal of the remainder of the cable will be at SWBT's expense. [Missouri Award No. 17] Excavation work performed by MCIm or an authorized contractor selected by MCIm shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither MCIm nor any authorized contractor selected by MCIm to perform excavation work under this subsection shall conduct facility excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of the facilities. MCIm shall indemnify and on request defend SWBT from any damages or claims resulting from the performance of excavation work by MCIm or any authorized contractor selected by MCIm under this subsection. MCIm shall not arrange for excavation work to be performed under this section by subcontractors who are not qualified contractors.*

10.03 Issuance of Licenses and Immediate Access When No Make-ready Work is Required. If SWBT determines that no make-ready work is necessary to accommodate MCIm's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to MCIm for immediate occupancy. Immediate occupancy prior to the issuance of a license shall be governed by Section 8.03.

10.04 Make-ready Work. If SWBT determines that make-ready work will be necessary to accommodate MCIm's facilities, SWBT shall promptly notify MCIm of

the make-ready work proposed to enable the accommodation of MCIm's facilities.

(a) The notice shall be given in writing no later than 45 days after the receipt by SWBT of MCIm's completed application pursuant to Section 9.02 of this Agreement or within such other period of time as may be mutually agreed upon in writing by the Parties.

(b) The notice will include SWBT's estimate of make-ready charges, which estimate shall be stated on SWBT Form SW-9434 ("Authorization for Pre-license Survey or Make-Ready Work"), a copy of which is attached hereto as part of APPENDIX III.

(c) MCIm shall have 20 days (the "acceptance period") after receiving SWBT's estimate of make-ready charges to authorize completion of the make-ready work proposed by SWBT or to advise SWBT of its willingness to perform the proposed make-ready work itself. If MCIm advises SWBT that it is willing to perform the make-ready work proposed by SWBT in accordance with SWBT's plans and specifications, SWBT will not refuse to accept MCIm's offer to perform the work. Authorization shall be accomplished by MCIm's signing the estimate and returning it to SWBT within the 20-day acceptance period.

(d) Within the 20-day acceptance period, the Parties may negotiate modifications of the make-ready work to be performed. If the Parties reach agreement through negotiation, a new estimate shall be prepared and authorization shall be accomplished by MCIm's signing the revised estimate and returning it to SWBT within the original 20-day acceptance period or within such period of time as may be mutually agreed upon by the Parties.

(e) If MCIm does not sign and return the estimate within the 20-day acceptance period or within such other period of time as may be mutually agreed upon in writing by the Parties, MCIm shall notify SWBT in writing by the 20th day whether MCIm is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c), or electing to treat SWBT's make-ready requirements as a denial of access.

(1) If no such notice is given by the 20th day or such later date as may be mutually agreed upon by the Parties, SWBT shall contact MCIm to determine whether MCIm intends to withdraw its application. MCIm shall be deemed to have withdrawn its application if, in response to SWBT's inquiry, MCIm does not immediately sign and return the estimate to SWBT.

(2) If MCIm timely notifies SWBT in writing that MCIm is

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**Key:** Regular Text = MCIm/SWBT negotiated language; **Bold Text** = MCIm language disagreed to by SWBT; *Italics* = Missouri PSC Arbitration Award and stipulation language. ***Bold Italics*** = *Conformed to Award but disagreed to by SWBT*. **Bold Underline** = SWBT language disagreed to by MCIm.

electing to treat SWBT's make-ready requirements as a denial of access, SWBT shall, within 20 days after receiving the notice, provide MCIm with a written statement explaining its decision to grant access only if the specified make-ready work is performed. The statement shall be specific, shall include all relevant evidence and information supporting SWBT's decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SWBT's decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SWBT's make-ready proposals and specifically address SWBT's rationale for rejecting MCIm's alternative written proposals, if any.

10.05 Performance of Make-ready Work. Except as otherwise specifically provided in Section 10.02 and this Section, make-ready work shall be performed by SWBT, MCIm, or by contractors, subcontractors or other persons acting on SWBT's behalf and shall be performed by SWBT in accordance with the same time intervals which would be applicable if SWBT were performing the work for itself.

(a) MCIm and SWBT will mutually establish and maintain lists of authorized contractors which may be selected by MCIm to perform make-ready work when SWBT's interval for beginning or completing such make-ready work does not meet MCIm's needs. . As determined by the Missouri Public Service Commission, MCIm shall, at MCIm's request, be included on such lists.

(b) *If SWBT's interval for beginning or completing make-ready work does not meet MCIm's needs, MCIm may, as an authorized contractor, perform the make-ready work itself, utilize authorized contractors selected by MCIm from the applicable list of authorized contractors jointly developed by MCIm and SWBT, or request that SWBT perform the work on an expedited basis at overtime rates. [Missouri Award No. 16(1)] Make-ready work will not be performed on expedited basis unless MCIm approves any overtime or premium rates or charges associated with performance of the work on an expedited basis.*

(c) *From time to time, additional contractors, subcontractors or other vendors may be jointly approved by MCIm and SWBT to perform make-ready work in the event that the work load exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner. [Missouri Award No. 16(1)]*

(d) Make-ready work performed by MCIm, by an authorized contractor selected by MCIm, or by a contractor, subcontractor, or other vendor jointly approved by the parties under subsection (c) shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither MCIm nor authorized contractors selected by MCIm to perform make-ready work under this section shall conduct such work in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of SWBT's facilities. **MCIm and any authorized contractor selected by MCIm to perform make-ready work shall indemnify and on request defend SWBT from any and all damages and claims resulting in whole or in part from their activities under this section.**

(e) *Nothing contained in this section authorizes MCIm, any authorized contractor selected by MCIm, or any other person acting on MCIm's behalf to consolidate SWBT's cables. [Missouri Award 16(1)]*

**10.06 Environmental Acceptance.** MCIm shall have twenty (20) days (the "acceptance period") after receiving the environmental, health and safety information described in Section 10.01(a) to withdraw its application if, in MCIm's sole discretion, such information presents conditions found to be unacceptable to MCIm.

**10.07 Multiple Applications.** Applications shall be processed on a first-come, first-served basis. Applications filed on the same date shall be treated as having been filed simultaneously and shall be processed accordingly.

**10.08 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities.** MCIm shall make arrangements with the owners of other facilities attached to SWBT's poles or occupying space in SWBT's conduit system regarding reimbursement for any expenses incurred by them in transferring or rearranging their facilities to accommodate the attachment or placement of MCIm's facilities to or in SWBT's poles, ducts, and conduits.

**10.09 Reimbursement for the Creation or Use of Additional Capacity.** MCIm acknowledges that as a result of make-ready or other capacity expansion work performed to accommodate MCIm's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, MCIm shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any pole attachment or conduit occupancy fees subsequently paid to SWBT for the use of such additional capacity by any joint user. SWBT shall, however, establish a methodology for giving MCIm notice of the subsequent use by SWBT or third parties of additional space or capacity created at MCIm's expenses. If



SWBT utilizes additional space or capacity created at MCIm's expense, SWBT will reimburse MCIm on a pro-rata basis for its share, if any, of **the make-ready or capacity expansion expenses MCIm's capacity expansion costs** in accordance with applicable FCC rules. If any third party later utilizes any such additional space or capacity, SWBT shall, at the request of MCIm or such third party, provide such information as may be available to SWBT to assist MCIm and such third party in determining the amount, if any, which such third party may owe MCIm as its pro-rata share of **such make-ready or capacity expansion expenses MCIm's capacity expansion costs**. Nothing contained in this section shall be construed as conferring or imposing on SWBT any right or duty to determine the amounts owing by any third party to MCIm, to collect or remit any such amounts for or to MCIm, to resolve or adjudicate any disputes over reimbursement between MCIm and such third party, to deny a third party access to SWBT's poles, ducts, conduits, or rights-of-way due to such third party's failure to satisfy MCIm's reimbursement demands, or to take any other action to enforce MCIm's reimbursement rights against any third party.

10.10 License and Attachment. After all required make-ready work is completed, SWBT will execute and return to MCIm a license confirming that MCIm may attach the specified facilities to SWBT's poles or place specified facilities in SWBT's conduit system. MCIm shall have access to attach or place only those facilities specifically described in the license, and no others, except as provided in section 12.03 below.

#### Section 11: Construction of MCIm's Facilities

11.01 MCIm's Responsibilities for Attaching and Placing Its Facilities. MCIm shall be responsible for the actual attachment of its facilities to SWBT's poles and the actual placement of its facilities in SWBT's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities. Except as otherwise provided in subsection 14.02(a), MCIm shall be solely responsible for (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and attachment of MCIm's facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

11.02 Construction Schedule. After the issuance of a license, MCIm shall provide SWBT with an updated construction schedule and thereafter keep SWBT informed of anticipated changes in the construction schedule. Construction schedules required by this section shall include, at a minimum, the following information:

- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;

- (b) the names of each contractor and subcontractor which will be involved in the construction activities;
- (c) the estimated dates when construction will begin and end; and
- (d) the approximate dates when MCIIm or personnel working on MCIIm's behalf will be performing construction work in connection with the attachment of MCIIm's facilities to SWBT's poles or the placement of MCIIm's facilities in any part of SWBT's conduit system.

## Section 12: Use and Routine Maintenance of MCIIm's Facilities And SWBT's Facilities

12.01 Use of MCIIm's Facilities. Each license granted under this Agreement authorizes MCIIm to have access to MCIIm's facilities on or within SWBT's poles, ducts, and conduits as needed for the purpose of serving MCIIm's customers.

12.02 Routine Maintenance of MCIIm's Facilities. Each license granted under this Agreement authorizes MCIIm to engage in routine maintenance of facilities located on or within SWBT's poles, ducts, and conduits pursuant to such license. Routine maintenance does not include the replacement or modification of MCIIm's facilities in any manner which results in MCIIm's attachments differing substantially in size, weight, or physical characteristics from the attachments described in MCIIm's license.

12.03 Installation of Drive Rings and J-Hooks. MCIIm may install drive rings and J-hooks on SWBT's poles for the attachment of drop wires as specified in this section:

- (a) Drive rings and J-hooks may be installed as specified in pole attachment licenses issued to MCIIm.
- (b) If attachment space has already been licensed to MCIIm on a given SWBT pole, MCIIm may install drive rings and J-hooks within the space assigned to MCIIm (e.g., six inches above and six inches below MCIIm's point of attachment on the pole) without applying for or obtaining a new or amended license. No additional attachment charges shall apply with respect to drive rings and J-hooks installed in MCIIm's licensed attachment space.
- (c) MCIIm's first choice for placement of drive rings and J-hooks shall be the licensed attachment space assigned to MCIIm as provided in subsections (a) and (b) above provided, however, that if attachment space already licensed to MCIIm on a given SWBT pole is not adequate for MCIIm's drive rings or J-hooks, MCIIm may, when necessary and without applying for or obtaining a new or amended license, install such drive rings and J-hooks above or below MCIIm's licensed attachment space as described in subsection (b) above. No additional attachment charges shall apply with

respect to drive rings and J-hooks installed outside MCIm's licensed attachment space as provided in this subsection.

(d) If MCIm has not already been licensed attachment space on a given SWBT pole, MCIm may, when necessary, install drive rings and J-hooks on unassigned space on such pole without first obtaining a license for such attachment. and shall, **immediately within 24 hours** following such installation, notify SWBT of the attachment. Such notification shall be made on a form to be developed by SWBT for this purpose and shall constitute an application for a license. Such application may be conditionally granted without a pre-license survey or other inquiry by SWBT, and SWBT shall not be required to process the application, log the attachment as an assignment in its outside plant records, or issue a permanent license for the attachment unless specifically requested by MCIm to do so; provided, however, that a conditionally granted application under this subsection shall be subject to revocation if it is subsequently determined that such attachment has been made in violation of subsection (e) of this section or other provisions of this Agreement. Such notification shall be made on a form to be developed by SWBT for this purpose and shall constitute an application for a license. Such application may be conditionally granted without a pre-license survey or other inquiry by SWBT, and SWBT shall not be required to process the application, log the attachment as an assignment in its outside plant records, or issue a permanent license for the attachment unless specifically requested by MCIm to do so; provided, however, that a conditionally granted application under this subsection shall be subject to revocation if it is subsequently determined that such attachment has been made in violation of subsection (e) of this section or other provisions of this Agreement.

(e) Notwithstanding the provisions of subsections (c)-(d) above, MCIm may not install drive rings and J-hooks in space assigned to SWBT or another joint user without the approval of SWBT or such other joint user and may not install drive rings and J-hooks in unassigned space in any manner which will block or preclude the subsequent occupancy or use of such space by SWBT or other joint users. If the presence of such MCIm facilities in space not assigned to MCIm will block or preclude the use of assigned or otherwise assignable space by SWBT or other joint users, MCIm shall, on SWBT's request, promptly relocate the facilities in order to accommodate the facilities of other users and shall bear all expenses associated with such relocation.

(f) SWBT may not install drive rings or J-hooks in space assigned to MCIm without MCIm's approval and shall, at MCIm's request, promptly relocate, at SWBT's expense, any drive rings or J-hooks installed in violation of this subsection. If SWBT drive rings or J-hooks have been

installed in space subsequently assigned to MCIIm, or if the presence of SWBT drive rings or J-hooks blocks or precludes the use of otherwise assignable space on SWBT's poles, SWBT shall, at MCIIm's request, relocate such facilities, if it is feasible to do so, as make-ready work.

(g) MCIIm shall, at the request of SWBT or another joint user, at MCIIm's expense, promptly relocate or remove any drive rings and J-hooks placed on SWBT's poles other than as permitted in this section.

**12.04 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities.** Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any person or entity (including but not limited to SWBT, MCIIm, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SWBT. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

**12.05 MCIIm Responsible for Maintenance of MCIIm's Facilities.** MCIIm shall be solely responsible for maintaining its own facilities, and (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of MCIIm's facilities, and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

**12.06 SWBT Responsible for Maintenance of SWBT's Facilities.** Except to the extent specifically stated otherwise in the Pole Attachment Act, SWBT shall be solely responsible for maintaining its own facilities including, but not limited to, all poles, ducts, conduits, conduct systems and manholes owned or controlled solely or in part, by SWBT. Such maintenance shall be at its sole cost.

**12.07 Information Concerning the Maintenance of MCIIm's Facilities.** Promptly after the issuance of a license, MCIIm shall provide SWBT with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of MCIIm's facilities and shall thereafter notify SWBT of

changes to such information. The manager responsible for routine maintenance of MCIm's facilities shall, on SWBT's request, identify any contractor, subcontractor, or other person performing maintenance activities on MCIm's behalf at a specified site.

### Section 13: Modification of MCIm's Facilities

13.01 Notification of Planned Modifications. MCIm shall notify SWBT in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a pole, anchor, or anchor/guy strand or located in any part of SWBT's conduit system. The notice shall contain sufficient information to enable SWBT to determine whether the proposed addition, relocation, replacement, or modification is permitted under MCIm's present license or requires a new or amended license. No notice shall be required for such routine modifications as the installation or placement of drop wire drive rings or J-hooks, terminals, and other ancillary apparatus routinely used in providing service to customers, having no effect on the structural integrity of SWBT's poles, ducts, or conduits, and having no effect on the ability of SWBT or joint users to use or have access to SWBT's poles, ducts, conduits, or rights-of-way.

13.02 New or Amended License Required. A new or amended license will be required if the proposed addition, relocation, replacement, or modification:

- (a) requires that MCIm occupy additional space on SWBT's poles (except on a temporary basis in the event of an emergency);
- (b) requires that MCIm occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Agreement) in any part of SWBT's conduit system except on a temporary basis in the event of an emergency;
- (c) results in the facilities attached being different from those described as authorized attachments in MCIm's present license (e.g., different duct or size increase causing a need to recalculate storm loadings, guying, or pole class); or
- (d) requires additional holding capacity on a permanent basis.

13.03 Use of Maintenance Duct in Connection with Facility Modifications and Replacements. Non-emergency access to the maintenance duct in connection with facilities modifications and replacements shall be subject to the provisions of Section 12.04 of this Agreement.

13.04 Replacement of Facilities and Spinning/Overlashing Additional Cables. MCIm may replace existing facilities with new facilities occupying the same pole,

duct, or conduit space, and may spin or overlash additional cables to its own existing facilities provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this Section 13.

13.05 Streamlined Procedures for the Issuance of Amended Licenses. SWBT may streamline procedures for the issuance of amended licenses with respect to proposed additions, relocations, replacements, or modifications of MCIm's facilities when it appears to SWBT that the proposed additions, relocations, replacements, or modifications will not require make-ready work by SWBT, will not interfere with SWBT's use of its poles, conduit systems, or facilities attached or connected thereto or contained therein, and will not interfere with the use of existing facilities attached or connected thereto or contained therein by joint users.

#### Section 14: Rearrangement of MCIm's Facilities at SWBT's Request

14.01 Notice of Planned Modifications. The Parties acknowledge that the Pole Attachment Act recites in part that "Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment." The Parties further acknowledge that the FCC, in its First Report and Order in CC Docket No. 96-98, recites that "... absent a private agreement establishing notification procedures, written notification of a modification must be provided to Parties holding attachments on the facility to be modified at least sixty (60) days prior to the commencement of the physical modification itself." Section 14 is intended by the Parties to alter the above-described notification requirements only as provided in section 14.02(b) below.

14.02 Rearrangement of MCIm's Facilities at SWBT's Request. MCIm acknowledges that, from time to time, it may be necessary or desirable for SWBT to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by SWBT's own business needs or by factors outside of SWBT's control, such as the decision by a municipality to widen streets or the decision by another person or entity to seek access to SWBT's poles, ducts, conduits, or rights-of-way.

- (a) MCIm agrees that MCIm will cooperate with SWBT and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by MCIm in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable statutes, rules, regulations, and commission orders, including the Pole Attachment Act and

rules, regulations, and commission orders thereunder. In the event that such costs incurred by MCIm are appropriately chargeable to SWBT, SWBT shall reimburse MCIm directly. In the event costs incurred by MCIm are chargeable to a joint user, MCIm will collect such charges directly from the joint user.

(b) MCIm shall make all rearrangements of its facilities within 60 days after receiving written notification by SWBT of the required rearrangements. SWBT may request that such modification be made within a shorter period of time, in which event MCIm shall not reject such request without due cause and justification. In determining due cause and justification the following factors, among others, may be considered:

- (1) the circumstances under which the rearrangements are sought;
- (2) the timeliness of SWBT's request to MCIm;
- (3) the nature and number of rearrangements sought;
- (4) the impact on the ability of the Parties and joint users to meet customer service needs; and
- (5) risks of service interruption to customers of the Parties and joint users.

(c) Nothing contained in Section 14 shall preclude MCIm from advising SWBT, within sixty (60) days from the date of the notice, of its desire to add to or modify its existing attachment.

## Section 15: Emergency Repairs and Pole Replacements

15.01 Applicability. The parties acknowledge that in the event of an emergency, services provided by the Parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to SWBT's poles to restore service to all customers at the same time, that disputes may arise between the Parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly, and that it is highly desirable that all service providers utilizing SWBT's poles, ducts, and conduits enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements, it is expected that disputes will be immediately resolved at the site among the affected Parties based upon the criteria set forth in Section 15.05 of this Agreement. The Parties further agree that the provisions of this Section shall apply in the absence of more comprehensive agreements relating

to emergency repairs.

15.02 MCIm Responsible for Emergency Repairs to Its Own Facilities; Access to Maintenance Duct. In general, MCIm shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling MCIm to make such repairs.

- (a) Nothing contained in this Agreement shall be construed as requiring SWBT to perform any repair or service restoration work of any kind with respect to MCIm's facilities.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SWBT, MCIm, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located provided; however, that a person or entity using the maintenance duct for emergency repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within thirty (30) days or, with SWBT's consent which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct is an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such Party occupies the maintenance duct. The Parties agree not to exceed thirty (30) days' use except in unusual emergencies that may require longer than thirty (30) days to rectify.
- (c) If necessary, other unoccupied ducts or inner ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any Party or joint user to whom such duct or inner duct has been assigned.

15.03 Designation of Emergency Repair Coordinators and Other Information. Promptly after the issuance of a license permitting MCIm to attach facilities to SWBT's poles or place facilities within SWBT's conduit system, MCIm shall provide SWBT with the emergency contact number of MCIm's designated point of contact for coordinating the handling of emergency repairs of MCIm's facilities and shall thereafter notify SWBT of changes to such information.

15.04 Reporting of Conditions Requiring Emergency Repairs. MCIm shall notify SWBT at the earliest practicable opportunity after discovering any condition on or in any of SWBT's poles, ducts, conduits, or rights-of-way requiring emergency repairs to SWBT's facilities and SWBT shall notify MCIm at the earliest practicable



opportunity after discovering any condition on or in any of SWBT's poles, ducts, conduits, or rights-of-way requiring emergency repairs to MCI's facilities.

15.05 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SWBT, MCI, and other affected Parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected Parties in accordance with the following principles.

(a) Emergency service restoration work requirements shall take precedence over other work operations.

(b) Except as otherwise agreed upon by the Parties, restoration of lines for emergency services providers (e.g., 911, fire, police, and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The Parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.

(c) SWBT shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected Parties are unable to reach prompt agreement; provided, however, that these decisions shall be made by SWBT on a nondiscriminatory basis in accordance with the principles set forth in this section.

15.06 Unilateral Corrective Action. When either Party reasonably believes that, due to the condition of the other Party's facilities placed on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, there is an immediate or imminent threat to the safety or health of employees or any other person, to the physical integrity or functioning of SWBT's or MCI's facilities, or SWBT's or MCI's ability to meet its service obligations, SWBT or MCI may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, SWBT or MCI may reattach them as provided in this section but shall not be obligated to do so.